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7 UNITED STATES BANKRUPTCY COURT  
8 NORTHERN DISTRICT OF CALIFORNIA

9 In re

10 WARREN and MICHELLE AYERS,

No. 03-11963

11 Debtor(s).  
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13 Memorandum on Trustee's Application for Compensation  
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14 Debtor Warren Ayers is an orthopedic surgeon who was called to active military duty in  
15 February, 2003. He and his wife Michelle filed their Chapter 7 bankruptcy petition on August 14, 2003,  
16 scheduling over \$400,000.00 in unsecured debt.

17 The case was originally noticed to creditors as a "no-asset" case, and they were advised not to  
18 file proofs of claim. However, after investigation the Chapter 7 trustee, Jeffry Locke, determined that  
19 there was excess value in the Ayers' home over and above encumbrances. On January 10, 2004, at  
20 Locke's request, the clerk of the court notified all creditors that a dividend was possible and that they  
21 should file claims on or before April 12, 2004.

22 On April 14, 2004, the Ayers' bankruptcy attorney wrote to Locke's attorney noting that only four  
23 claims had been filed, the largest of which was overstated, and that the Ayers would be able to pay all  
24 claims plus administrative expenses, thereby avoiding the sale of their home. However, the day before  
25 Locke had filed claims on behalf of all scheduled unsecured creditors, making sale of the home  
26

1 necessary.<sup>1</sup>

2 Locke's fee application is now before the court. The court has serious reservations about it, as it  
3 appears that Locke filed claims for the creditors only to churn the case.<sup>2</sup>

4 The practice of a trustee filing claims for all creditors who have not done so is generally  
5 considered odious and is barred in some jurisdictions. See *In re Drew*, 256 B.R. 799, 805 (10<sup>th</sup> Cir.  
6 BAP 2001)[Congress did not intend for trustees to engage in wholesale filing of late claims for  
7 creditors; order allowing such claims reversed]; *In re Nettles*, 251 B.R. 899 (Bkrtcy.M.D.Fla.  
8 2002)[The primary purpose of allowing the trustee to file a late claim is to protect the debtor from  
9 unpaid nondischargeable claims; objections to claims filed by trustee sustained]. There are no cases in  
10 this circuit dealing with the issue, although any action taken by a trustee to churn as case in order to  
11 increase his fees is frowned upon. See *In re Pauline*, 119 B.R. 727 (9<sup>th</sup> Cir. BAP 1990).

12 In a prior written decision in another case, the court had agreed with *Drew* and *Nettles* that the  
13 trustee's wholesale filing of claims was not proper but ruled that the proper sanction was reduction or  
14 forfeiture of fees rather than disallowance of the claims. The court must now decide how to apply that  
15 rule in this case.

16 Locke argues that the calculation of his maximum fee is the same whether or not he filed claims  
17 for creditors, but that is somewhat disingenuous. The calculation is only the same if the house had to be  
18 sold, as the payment of the mortgage on the home is considered payment of a claim for fee cap  
19 calculation purposes. However, Locke knew that Ayers was a physician and that there was equity in his  
20 home, so that Ayers might be able to refinance the home and pay the estate's claims and administrative  
21 expenses. The court has little difficulty inferring that Locke's motivation in filing the claims was to  
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23 <sup>1</sup>Section 501(c) of the Bankruptcy Code gives the debtor and the trustee the right to file claims  
24 for creditors after the bar date if the creditor has not filed a claim.


25 <sup>2</sup>The Ayers filed a pleading bringing this matter to the court's attention. The court does not treat  
26 this matter as an objection filed by them, as they have no standing in this matter. The court here  
exercises its independent duty to review the fees of all professionals.

1 avoid this possibility, rather than the altruistic motives he claims.

2 Locke's only saving grace in this case is that he filed the claims the day before he received the  
3 letter from the Ayers' attorney notifying him that sale of the home would not be necessary; had the claims  
4 been filed a day later, the court would not allow him any compensation.<sup>3</sup> However, the court feels that it  
5 is important not to give trustees any incentive to churn a case by the wholesale filing of claims for  
6 creditors. Accordingly, the court will award Locke no more than the maximum he would have been  
7 eligible to receive had he not filed those claims.

8 The court finds that if Locke had not filed the claims the Ayers' home would not have had to be  
9 sold and his maximum fee would have been \$6,884.64, computed using total allowed claims of  
10 \$72,692.82.<sup>4</sup> Under all the circumstances of this case, the court considers this amount sufficient  
11 compensation for Locke rather than the \$32,754.04 he seeks.<sup>5</sup> His expenses will be allowed as filed.  
12 Locke's counsel shall submit an appropriate form of order.

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14 Dated: March 28, 2005

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17 Alan Jaroslovsky  
18 U.S. Bankruptcy Judge  
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23 <sup>3</sup>Not that the Ayers' attorney did not act diligently; Locke just beat him to the draw.

24 <sup>4</sup>One of the four timely claims filed by creditors was later reduced from \$134,299.29 to  
25 \$34,853.70.

26 <sup>5</sup>The amount sought by Locke is unjustified in any event, as it is the maximum computed including  
the secured debt and is out of line with service actually rendered.